

ESTTA Tracking number: **ESTTA257118**

Filing date: **12/23/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	FAIRWAY & GREENE, LTD.
Granted to Date of previous extension	12/31/2008
Address	4 CORPORATE DRIVE, SUITE 398 SHELTON, CT 06484 UNITED STATES
Correspondence information	K. BRADFORD ADOLPHSON WARE, FRESSOLA, VAN DER SLUYS & ADOLPHSON LLP 755 Main Street, P.O. Box 224 MONROE, CT 06468 UNITED STATES kba@wfva.net Phone:203-261-1234

### Applicant Information

Application No	77290884	Publication date	09/02/2008
Opposition Filing Date	12/23/2008	Opposition Period Ends	12/31/2008
Applicant	YUPOONG, INC. 416-1, Guro-dong, Guro-gu Seoul, KOREA, REPUBLIC OF		

### Goods/Services Affected by Opposition


Class 024. All goods and services in the class are opposed, namely: Textile fabrics for manufacturing clothing and headwear
Class 025. All goods and services in the class are opposed, namely: Headwear, namely, hats, caps, cap peaks, visors and top hats; Clothing accessories, namely, headbands and sweatbands


### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3332815	Application Date	08/07/2006
Registration Date	11/06/2007	Foreign Priority Date	NONE

Word Mark	PUREFORMANCE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2007/05/15 First Use In Commerce: 2007/05/15 Clothing, namely, shirts, pants, slacks, shorts and sweaters

U.S. Registration No.	3263094	Application Date	01/20/2006
Registration Date	07/10/2007	Foreign Priority Date	NONE
Word Mark	PERFORMANCE BY NATURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2006/05/01 First Use In Commerce: 2006/05/01 clothing, namely, shirts, pants, slacks, shorts, sweaters and gloves		

Attachments	78946382#TMSN.jpeg ( 1 page )( bytes ) 78795893#TMSN.jpeg ( 1 page )( bytes ) Revised Notice of Opposition.pdf ( 4 pages )(18190 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/K. B. ADOLPHSON/
Name	K. BRADFORD ADOLPHSON

Date	12/23/2008
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FAIRWAY & GREENE, LTD.,	:	
	:	Opposition No.
Opposer,	:	
	:	Serial No. 77/290,884
v.	:	
	:	Published: September 2, 2008
YUPOONG, INC.,	:	
	:	
Applicant.	:	

**NOTICE OF OPPOSITION**

In the matter of the application of YUPOONG, INC. for the registration of PRO-FORMANCE in intent-to-use Application Serial No. 77/290,884 filed September 27, 2007, FAIRWAY & GREENE, LTD., a corporation of the State of Delaware, having its principal place of business located at 4 Corporate Drive, Suite 398, Shelton, Connecticut 06484, believes it will be damaged by the registration of the mark shown in the application and hereby opposes same. Application No. 77/290,884 was published for opposition in the Official Gazette of September 2, 2008. The time to file this opposition has been extended until December 31, 2008.

The grounds for the opposition are:

1. Opposer FAIRWAY & GREENE, LTD. is the owner of U.S. Registration No. 3,332,815 for the mark PUREFORMANCE registered in the United States Patent and Trademark Office on November 6, 2007 for clothing, namely, shirts, pants, slacks, shorts and sweaters in International class 25 based on an intent-to-use application filed August 7, 2006

and U.S. Registration No. 3,263,094 for the mark PERFORMANCE BY NATURE registered in the United States Patent and Trademark Office on July 10, 2007 for clothing, namely, shirts, pants, slacks, shorts, sweaters and gloves in International class 25 based on an intent-to-use application filed January 20, 2006 .

2. Prior to September 27, 2007, Opposer FAIRWAY & GREENE, LTD. adopted and used the mark PUREFORMANCE for clothing, namely, shirts, pants, slacks, shorts and sweaters and the mark PERFORMANCE BY NATURE for clothing, namely, shirts, pants, slacks, shorts, sweaters and gloves.

3. Opposer FAIRWAY & GREENE, LTD. has expended large sums of money in advertising and promoting its goods under the marks PUREFORMANCE and PERFORMANCE BY NATURE.

4. Through extensive advertising and use of its marks PUREFORMANCE and PERFORMANCE BY NATURE, Opposer FAIRWAY & GREENE, LTD. has developed an excellent and enviable reputation for its goods provided thereunder.

5. The marks PUREFORMANCE and PERFORMANCE BY NATURE have become and are widely known to the trade and the public as identifications and designations of goods emanating exclusively from Opposer FAIRWAY & GREENE, LTD. The marks PUREFORMANCE and PERFORMANCE BY NATURE, along with the accompanying goodwill, represent very valuable business assets which belong exclusively to Opposer FAIRWAY & GREENE, LTD.

6. Notwithstanding Opposer's long prior rights in and to its marks, Applicant has filed Application Serial No. 77/290,884 for registration of PRO-FORMANCE for textile fabrics for manufacturing clothing and headwear in Int. Class No. 24 and headwear, namely, hats, caps, cap peaks, visors and top hats; clothing accessories, namely, headbands and sweatbands in Int. Class No. 25.

7. The mark PRO-FORMANCE of Applicant so resembles the previously used and registered marks PUREFORMANCE and PERFORMANCE BY NATURE of Opposer as to be likely, when applied to the goods stated in Applicant's application, to cause confusion, deception and mistake within the meaning of Section 2(d) of the Trademark Act. Applicant's registration or use of PRO-FORMANCE interferes with Opposer's use of its marks and will seriously damage Opposer.

WHEREFORE, Opposer believes that it will be damaged by the registration of Application Serial No. 77/290,884 and prays that this opposition be sustained in favor of Opposer and that registration to Applicant be refused.

The opposition filing fees of \$600.00 accompany this paper. If any additional fee is required, please charge Deposit Account No. 23-0442.

Respectfully submitted,

FAIRWAY & GREENE, LTD.,  
Opposer

Dated: December 23, 2008

By /K. B. Adolphson/  
K. Bradford Adolphson  
Registration No. 30,927  
Attorney for Opposer

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& ADOLPHSON  
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**CERTIFICATE OF SERVICE**

This hereby certifies that a copy of this paper was mailed to Applicant on the date indicated below by depositing the same with the United States Postal Service as first-class mail, postage prepaid to:

David M. Pitcher  
Alexander H. Butter  
Staas & Halsey LLP  
1201 New York Avenue NW Floor 7  
Washington, DC 20005-3917

Dated: December 23, 2008

By           /K. B. Adolphson/            
K. Bradford Adolphson